IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CRIMINAL JURISDICTION

CRIMINAL APPEAL NO.474 OF 1988

1) Madhukar Rajaram More)

2) Sanjay Ramchandra Mane)
(At present undergoing sentence)
in Nasik Central Prison).).. APPELLANTS

VERSUS

The State of Maharashtra).. RESPONDENT

Mr.C.K. Talekar, Advocate, for the Appellants.

Smt.P.H.Kantharia, Additional Public Prosecutor,
for the Respondent State.

**CORAM: V.G. PALSHIKAR, Acg. C.J. &
SMT.NISHITA MHATRE, J.**

DATED: 21ST AUGUST 2006

ORAL JUDGMENT : (PER MHATRE, J.)

. This Appeal challenges the conviction and sentence imposed on the Appellants by the Additional Sessions Judge, Greater Bombay. Both the Appellants have been convicted under the offence punishable under Section 302 read with Section 34 of the Indian Penal Code. Both the Appellants are sentenced to imprisonment for life.

2. After the Appeal was admitted, it came to be dismissed for default on 10th July 2003. The Appeal was then restored only qua Appellant No.2 i.e. original

Accused No.2. Therefore, we will proceed to consider whether the conviction and sentence imposed on Appellant No.2 (hereinafter referred to as "the Appellant") is justified.

3. The case of the prosecution is that on 13th April 1985 a Municipal Guard working at Jalannagar Municipal Water Tank discovered a dead body lying in a ditch near the tank. This body was discovered around 7.00 a.m. The police arrived at the spot after being intimated regarding the dead body. It is the case of the prosecution that PW5, the younger brother of the deceased Maruti Hari Sutar, had gone to police station to file a complaint regarding his missing brother. The police showed him the photograph of the dead body and PW5 identified the same as that of his brother. The post mortem examination of the dead body was conducted and the cause of death has been recorded as Asphyxia from strangulation (unnatural). The police arrested both the Appellants. A white pair of pants and the footwear used by the deceased were discovered at the instance of the Appellant. The case was committed to the Court of Sessions.

4. The prosecution has examined twelve witnesses. PW1 is the Draftsman who has drawn the plan indicating the place from where the dead body was taken charge of

by the police. PW2 is the Municipal Guard who discovered the dead body. PW3 is the Junior Engineer who informed the police of the discovery of the dead body. PW4 is the panch witness in whose presence the dead body was taken charge of. PW5 is the younger brother of the deceased. PW6 has performed the post mortem on the deceased. PW7 is the panch witness in whose presence a wrist watch belonging to the deceased was recovered at the instance of Accused No.1. PW8 is the panch witness who was present when a pair of trousers and the footwear of the deceased was recovered at the instance of the Appellant.

5. There is no eye witness to the crime. The entire case of the prosecution is based on circumstantial evidence. There is no dispute that the death of the deceased was homicidal. However, the prosecution has alleged that besides strangulating the deceased, the Appellants had inflicted injuries on the private parts of the deceased. The medical evidence, however, does not support this case of the prosecution. The post mortem report does not indicate any injuries to the private parts of the deceased. In fact, PW6, i.e. the Doctor who performed the post mortem examination, has admitted in cross-examination that there was no injury of such a nature sustained by the deceased. The cause of death has been stated as Asphyxia due to

strangulation. The Doctor has also opined that there were several injuries on the body which were antei-mortem.

6. The only circumstantial evidence pointing to the Appellant is the discovery of a pair of trousers and footwear of the deceased made at the instance of the Appellant. PW8, the panch witness, who was present when the discovery was made, has stated that the Appellant led the police to a spot near the crushing machine near the gate of the Konkannagar. The trousers and the footwear were recovered from a blue plastic bag which was hidden under the bushes near a pond. This witness has admitted that the Appellant was handcuffed all throughout. The discovery of the apparel of the deceased was made on 11th May 1985, a month after the body was discovered. Undisputedly, several persons had access to the place where the discovery was made. Given the fact that the discovery of this apparel was made a month after the body was discovered, it is difficult to accept the case of the prosecution. Apart from this is the fact that the Appellant was handcuffed when the discovery was made. Therefore, the statement made under Section 27 of the Evidence Act was not a voluntary statement. This is a circumstance which must be borne in mind while considering whether there is any incriminating evidence against the Appellant. There is

evidence on record to indicate that the blood stains from the white trousers discovered had been washed. The blood stains on the trouser indicated that they were of "B" Group, which was the blood group of Appellant No.1. The blood group of Appellant No.2 is "O" Positive. All these factors make it difficult for us to accept the case of the prosecution that the Appellant was involved in the murder of the deceased.

7. There is, therefore, in our opinion, no conclusive proof leading to an inference that the Appellant was involved in the crime. The chain of circumstances does not point to the Appellant. We, therefore, set aside the conviction and sentence of Appellant No.2.

8. Appeal allowed. Appellant No.2 be released forthwith, if not otherwise required in law.

(V.G.PALSHIKAR, Acg.C.J.)

(SMT.NISHITA MHATRE, J.)